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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,413	11/10/2003	Fatih Guler	A2-03US2	9992
7590 12/29/2004			EXAMINER	
Ivan D. Zitkovsky, Ph.D. 5 Militia Drive Lexington, MA 02421			LEE, KEVIN L	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,413

Applicant(s)

GULER ET AL.

Examiner

KEVIN L LEE

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65, 67, 69-74, 78-84 and 87 is/are rejected.
- 7) ☒ Claim(s) 66, 68, 75-77, 85 and 86 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date August 10, 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

It is noted that the list of the claims filed on November 10, 2003 included two different claims numbered 78. Applicant must provide a new list of claims in view of this error in response to this Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 69 and 70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular regard to claim 69, the specification is not believed to disclose the claimed limitation of the driver module being mechanically attached to a body member of the flush valve "using a threading previously used to attach said manual handle to a body of the flush valve." In particular regard to claim 70, the specification is not believed to disclose the driver module being mechanically attached to the body member of the flush valve "using a bracket." Applicant is respectfully requested to point out the specific location in the specification disclosing these limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 65, 67, 71-74, 78 and 87 are rejected under 35 U.S.C. 102(b) as being anticipated by Radcliffe (U.S. Patent No. 3,019,453). The patent to Radcliffe discloses a conversion assembly comprising a control module (42, 44), power module (20), and a driver module (26). The driver module (26) includes a gear mechanism (24) mechanically coupled to a displacement member (30). One end of the displacement member is attached to a body member (13) of the flush valve. It is noted that claim 78 is the second claim numbered 78 (the claim on page 30).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Radcliffe in view of Parsons et al (U.S. Patent No. 5,125,621). The patent to Radcliffe lacks having a diaphragm-type flush valve member. The patent to Parsons et al teaches the

Art Unit: 3753

above exception in providing a diaphragm-type valve member for the flush valve. In view of the teaching of Parsons et al, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the valve of Radcliffe to include a diaphragm-type valve member as an alternate means of controlling the fluid flow through the flush valve.

Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Radcliffe in view of Filliung, Jr. (U.S. Patent No. 2,552,625). The patent to Radcliffe lacks having a piston-type flush valve member. The patent to Filliung, Jr. teaches the above exception in providing a piston-type valve member for the flush valve. In view of the teaching of Filliung, Jr., it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the valve of Radcliffe to include a piston-type valve member as an alternate means of controlling the fluid flow through the flush valve.

Claims 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Radcliffe in view of Chiang et al (U.S. Patent No. 5,224,685). The patent to Radcliffe lacks having the power module (20) powered by a battery and the control module to include a motion sensor. The patent to Chiang et al teaches the above exceptions in providing a battery (60) and a motion sensor (30) for an automatic flush valve, col. 2, lines 6-19. In view of the teaching of Chiang et al, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the valve of Radcliffe to include a battery to remotely supply electrical power to the power module and to provide a motion sensor to cause the valve to be automatically flushed upon the sensed presence of a user.

Art Unit: 3753

Allowable Subject Matter

Claims 66, 68, 75-78, 85 and 86 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is noted that claim 78 is the first claim numbered 78 (the claim on page 29).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN L LEE whose telephone number is (571) 272-4915. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GENE MANCENE can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DECEMBER 23, 2004


Kevin Lee
Primary Examiner